

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMERICAN MEDICAL SYSTEMS, INC. and)		
LASERSCOPE,)	
)	
Plaintiffs,)	
)	Civil Action No. 3:07-cv-30109-MAP
v.)	
)	
BIOLITEC, INC.,)	
)	
Defendant.)	

**PLAINTIFFS' LOCAL RULE 56.1 STATEMENT OF MATERIAL FACTS
AS TO WHICH A GENUINE ISSUE EXISTS IN OPPOSITION TO BIOLITEC, INC.'S
MOTION FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT**

Pursuant to Local Rule 56.1, Plaintiffs American Medical Systems, Inc. and Laserscope (collectively "AMS") submit this Statement of Material Facts of record as to which a genuine issue exists to be tried in opposition to Defendant Biolitec, Inc.'s Motion for Summary Judgment of Non-Infringement.

1. Whether laser radiation at the 980 nm wavelength is highly absorptive in the tissue, while being absorbed only to a negligible degree by water or other irrigant. (*See* Declaration of Kenneth J. Arnold ¶¶ 5-24; Exhibit A to Declaration of Scott McBride, U.S. Patent No. 6,986,764, at 2:17-25, 2:33-38, 4:28-29, 5:12-16, 5:16-19, 5:52-56, 8:10-12, 12:23-34, 15:26-34, 17:34-39, 17:65-18:2, 18:23-31, 18:55-60, 19:13-22, 19:42-59, 19:64-20:8, 20:9-24, 20:40-51, 20:52-63, 20:64-21:8, 21:9-27, 21:50-52, 22:1-33, 22:41-23:5, 23:6-47, 24:1-13, 24:28-31; Ex. F, Te, *The Next Generation In Laser Treatments and the Role of the GreenLight High-Performance System Laser*, 8 *Reviews in Urology* (Suppl. 3) (2006), at S26; Ex. D, *Applied Laser Medicine*, Ch. I-3.1 (Berlien & Müller, eds. 2003), at 75; Biolitec Ex. 13, Te, *The Development of Laser Prostatectomy* (2004), at 263; Ex. G, Prahl, *Optical Absorption of Hemoglobin*; Ex. H Prahl, *Tabulated Molar Extinction Coefficient for Hemoglobin in Water*;

Biolitec Ex. 3, 2/21/08 Moran Tr. at 179; Ex. L, Stedman's Medical Dictionary, 26th Edition (1995), at 1358; Ex. M, 6/7/08 Turk Tr. at 138:10-140:13, 141:8-13; Exs. N, Q, R; Ex. U, Hai, M.D. presentation, at AMS012969; Ex. V, 4/17/08 Arnold Tr. at 160:20-161:3; Biolitec Br. at 11, 14; Biolitec Exs. 14-15.)

2. Whether, in a method of using Biolitec's accused system, absorption of the 980 nm laser radiation in irrigant would be negligible even if the laser probe was not applied directly to the prostate tissue during treatment. (*See id.*)

With this identification, Plaintiff AMS submits that genuine issues of material fact preclude the adoption of paragraphs 2 and 3 of Defendant Biolitec's Statement of Undisputed Material Facts. Plaintiff AMS submits that genuine issues of material fact preclude the adoption of paragraph 4 thereof, to the extent that Biolitec submits that the laser probe is applied directly to the prostate tissue during treatment "to prevent absorption of the 980 nm laser radiation in the water irrigant." (Biolitec's Rule 56.1 Stmt. ¶ 4.)

Respectfully submitted,

Dated: November 20, 2008

I hereby certify that a true copy of the above document was served upon the attorney of record for Defendant Biolitec, Inc.

/s/ Scott P. McBride

/s/ Scott P. McBride

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